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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,416	03/15/2004	Paul C. Mioduski	127143.00003	1961
26707	7590	01/23/2008		
QUARLES & BRADY LLP RENAISSANCE ONE TWO NORTH CENTRAL AVENUE PHOENIX, AZ 85004-2391			EXAMINER GIBSON, ROY DEAN	
			ART UNIT 3739	PAPER NUMBER
			MAIL DATE 01/23/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,416

Applicant(s)

MODUSKI ET AL.

Examiner

Roy D. Gibson

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/27/2007.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

RCE

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/27/2007 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 26, 34, 40 and 46 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: it is unclear where the cold junction of the probe is located. The examiner assumes from the Specification that the only cold junction is that of the cold junction compensation circuit shown in Figure 3. Therefore, the claims have been examined under this assumption. Clarification is required.

Claims 31, 38 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear from the disclosure how a function of the tissue is related to the scalability of the RF signal. Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26-28, 30, 33-35, 37, 39-42, 44, 46, and 49-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards et al. (5,484,400). Edwards et al. disclose a medical treatment device for treating tissue, comprising:

a radio frequency (RF) generator for providing an RF signal;

a probe (Figures 6 and 7) coupled to the RF generator for transmitting RF energy from the RF signal into the tissue to be treated, wherein the RF energy is imparted into the tissue to increase its temperature while maintaining a cold junction temperature of a thermocouple whose hot junction is located in the probe, the probe including a sensor for measuring the temperature of the tissue and providing a measured temperature signal; and

a control unit coupled to the RF generator for controlling the RF signal response to the measured temperature signal from the probe (col. 3, lines 29-40, col. 4, lines 5-

50, col. 5, lines 11-29, col. 5, line 52-col. 6, line 31, col. 8, line 47-col. 9, line 11 and col. 9, lines 25-50).

Further to claims 27, 35 and 42, Edwards et al. disclose the capability of heating tissue which inherently could treat hypothermia or warts, for example (Abstract).

Further to claim 28, 30, 32, 33, 37, 39 and 44, Edwards et al. disclose the medical treatment device further includes an enclosure housing the RF generator and control unit, the enclosure having a control knob (equivalent selection means) for selecting a target temperature, a display for displaying the measured temperature signal, and a connector for connecting the probe; wherein the temperature of the tissue to be treated is ramped up (increased) over a period of time, and an indicator signal is generated when the temperature of the tissue reaches the target temperature; wherein the tissue is elevated to a target temperature and held at the target temperature for a predetermined period of time as determined by criteria pertaining to a thermal dose necessary for treatment of the tissue; and, wherein the probe includes a high voltage tip and a ground tip (mono-polar operation and col. 5, line 52-col. 6, line 51).

Further to claims 46 and 48-50, Edwards et al. disclose the method of treating tissue essentially as claimed as detailed by the device description above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29, 36, 43 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. ('400) in view of Ryan (6,280,441). Edwards et al. fail to specifically disclose the RF signal is modulated. However, Ryan a device for RF ablation with a power modulator to maintain the impedance of the tissue at its low point before it begins to rise (col. 7, lines 12-41). Therefore, it would have been obvious to one of ordinary skill in the art to modify the device and method of Edwards et al. as taught by Ryan, to provide a power modulator that modulates the RF signal to maintain the impedance of the tissue at its low point before it begins to rise.

Allowable Subject Matter

Claim 48 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

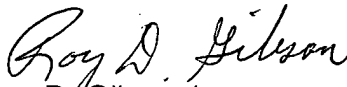
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


/Roy D. Gibson/
Primary Examiner
Art Unit 3739

January 22, 2008